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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,469	08/24/2005	Thilo Kraemer	MSA-261	8210
7590	12/12/2006		EXAMINER REIS, TRAVIS M	
			ART UNIT 2859	PAPER NUMBER

DATE MAILED: 12/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/549,469	<b>Applicant(s)</b> KRAEMER, THILO	
	<b>Examiner</b> Travis M. Reis	<b>Art Unit</b> 2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 August 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>20060825</u> | 6) <input checked="" type="checkbox"/> Other: ____                                     |

## DETAILED ACTION

### *Election/Restrictions*

1. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

Species I, drawn to a device for measuring thickness incorporating a magnetic belt, as shown in Figures 1 & 2.

Species II, drawn to a device for measuring thickness incorporating a magnetic disk.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

2. The claims are deemed to correspond to the species listed above in the following manner:

Claims 1-10 corresponds to Species I.

Claim 11 corresponds to Species II.

The following claim(s) are generic: none.

3. The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: A magnetic belt is operated in a dissimilar manner

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than a magnetic disk.

4. During a telephone conversation with Mr. Kasper on 12/5/6 a provisional election was made without traverse to prosecute the invention of Species I, claims 1-10. Affirmation of this election must be made by applicant in replying to this Office action. Claim 11 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Claim Objections***

5. Claims 1, 3, 6, 8, 10, & 11 are objected to because of the following informalities:

In claim 1, line 1, "length" should be ---length---.

In claim 3, line 2, "an a" should be ---in a---; "an or" should be ---on or---.

In claim 6, line 2, "an" should be ---on---.

In claim 8, line 1, "9" should be ---7---; in line 2 & 3, "an" should be ---on---.

In claim 10, line 2, "an" should be ---on---.

In claim 11, line 5, "an" should be ---on---; line 10, "an" should be ---on---.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. With reference to claims 1 & 2, a broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent

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protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 1 recites the broad recitation "A method for measuring the thickness and/or length of objects having a solid or gel-like consistency", and the claim also recites "especially pharmaceutical objects such as tablets, pill, or oblongs"; while claim 2 recites the broad recitation "A device for measuring the thickness and/or length of objects having a solid or gel-like consistency", and the claim also recites "especially pharmaceutical objects such as tablets, pill, or oblongs" which are the narrower statements of the range/limitations.

Claims 3-10 are rejected due to their dependency upon a rejected base claim.

9. Claim 1 provides for the use of the method for measuring thickness, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

### ***Claim Rejections - 35 USC § 101***

10. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

11. Claim 1 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e.,

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results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

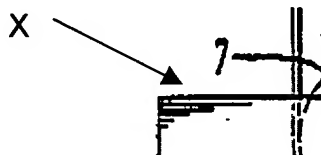
### **Claim Rejections - 35 USC § 103**

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 1-5 & 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gruhler (U.S. Patent 4924598) in view of Kaburagi et al. (U.S. Patent 5434602).

With reference to claims 1-5, 9, & 10 Gruhler discloses a device and method of using for measuring the thickness of objects comprising a base (30) from which a column (1) rises vertically with a placement surface for the object (X, see below),



whereby a length-measuring system is arranged along the column comprising a continuously looped belt (5) mounted along the column on a carriage (3) (Figure 1) along a groove/guide (2) & rollers (6,7) (Figures 1 & 10); moved along the column by means of an electric motor (10) (Figure 2), while a projecting arm (4) engages the belt being able to accompany the movement of the belt for making contact with the object to be measured (Figure 1).

Gruhler does not disclose the belt is magnetic and provided with a plurality of pole pitches, with a stationary magnetic field sensor having an electric evaluation circuit on the base.

Kaburagi et al. discloses a recording apparatus with a magnetic linear encoder in the embodiment shown in Figure 60 with a looped scale (733) with pole pitches (col. 28 line 27)

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sensed by a stationary magnetic sensor (737) and a counting circuit (739) in order to read information on said scale without hindering any other component (col. 28 lines 36-40) and detect the speed and position of the carriage (732) (col. 28 lines 48-50). Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to add the pole pitches, disclosed by Kaburagi et al. to the belt, and add the sensor and counting circuit disclosed by Kaburagi et al. to the base disclosed by Gruhler in order to not only detect that motion is occurring up or downward as Gruhler discloses (col. 6 lines 51-56), but that an absolute position value is known.

With reference to claims 7 & 8, Gruhler does not disclose a tension spring that engages an end of the carriage and the other end engages the base.

Kaburagi et al. discloses a tension spring (746) engaged with the carriage (732) (through connection to the pulleys) in order to take up the scale (733) without slack (col. 28 lines 33-35). Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to add the tension spring disclosed by Kaburagi et al. to the rollers/carriage disclosed by Gruhler in order to take up the belt without slack.

14. Claims 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gruhler & Kaburagi et al. as applied to claims 1-5 & 7-10 above, and further in view of Hassell (U.S. Patent 6185832).

Gruhler & Kaburagi et al. disclose all of the instant claimed invention as stated above in the rejection of claims 1-5 & 7-10, but does not disclose the movement means has teeth into which a drive cog wheel meshes.

Hassell discloses an apparatus (15) for callipering book signatures with a toothed belt (49) and drive cog wheel (50) (Figure 7) for driving movement without slippage and to maintain proper timing (col. 5 lines 1-3). Therefore, it would have been obvious to one with ordinary skill

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in the art at the time of the invention was made to add teeth to the belt and drive wheel disclosed by Gruhler & Kaburagi et al. in order to drive movement without slippage and to maintain proper timing in measurement.

### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Weig discloses an apparatus for measuring displacement (U.S. Patent 3816002). Amsbury et al. discloses a measuring instrument (U.S. Patent 4063362). Weber et al. disclose a linear glass scale height gage (U.S. Patent 40373325). Sasaki discloses a thickness detecting device (U.S. Patent 5575075). Clot et al. disclose an apparatus for measuring length (U.S. Patent 5174030). Von Voros discloses a digital electro-optical micrometer (U.S. Patent 4034477). Gould discloses calipers (U.S. Patent 23564). Wallgren discloses a micrometer gauge (U.S. Patent 596346). Weber discloses a measuring apparatus (U.S. Patent 5131166). Jordil et al. disclose a column for measuring longitudinal distances (U.S. Patent 6751884). Motokura et al. disclose a height sensor (JP 40609440 A).

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Travis M. Reis whose telephone number is (571) 272-2249. The examiner can normally be reached on 8--5 M--F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR



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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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December 5, 2006